

# Overview of the Court System in Bangladesh

## The Court Hierarchy

The Constitution of Bangladesh provides there shall be one Supreme Court of Bangladesh comprised of two divisions, the Appellate Division and the High Court Division. The Constitution further provides that Supreme Court shall be composed of the Chief Justice and such number of other judges as the President deems necessary to appoint. At this time there are 7 Judges of the Appellate Division and 56 judges of the High Court Division.<sup>1</sup> The Chief Justice is by tradition the most senior judge who has not yet attained the age of 65, the mandatory age of retirement for all judges of the Supreme Court. His term lasts as many months or years as his life span between the day of appointment and his 65<sup>th</sup> birthday.

The Appellate Division has jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division. An appeal to the Appellate Division lies as of right where the High Court Division (a) certifies that the case involves a substantial question of law as to the interpretation of the Constitution; or (b) has sentenced a person to death or for imprisonment for life, or (c) has imposed punishment on a person for contempt of that division; and (d) in such other cases as may be provided for by Act of Parliament. In all other cases appeal lies only if the Appellate Division grants leave to appeal.

The High Court Division of the Supreme Court, which sits in Dhaka, has both original and appellate jurisdiction. It also has what is known as revisional jurisdiction.<sup>2</sup> Its original jurisdiction extends to Admiralty and Company matters and other matters that may be provided by Parliament. It has special jurisdiction in writ matters for securing and protecting fundamental rights, and for providing extraordinary remedies not provided for in the lower courts. Challenges to the constitutionality of legislation and administrative orders are filed in the High Court. The High Court's revisional jurisdiction can be exercised in both civil and criminal matters originally heard before the subordinate courts. It is worth noting that approximately 1/3 of civil cases pending in the High Court at year-end 2000 were revision cases.

Below the Supreme Court in the judicial hierarchy are subordinate courts, which are maintained at the District level. There are both civil courts, referred to as the District Courts, and criminal courts, referred to as the Courts of Sessions. Typically these two

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<sup>1</sup> Heading the delegation in San Francisco is the third most senior judge of the Supreme Court, a member of the Appellate Division, and two High Court Division judges.

<sup>2</sup> The right of revision is provided in the Civil Procedure Code: "The High Court Division may call for the record of any case which has been decided by any Court subordinate to the High Court Division and in which no appeal lies thereto, and if such subordinate Court appears to have committed any error of law, the High Court Division may make such order in the case as it thinks fit." This right of revision is exercised with respect to interlocutory orders as well as final judgments and results in cases being stayed for years in lower courts until the case dies or litigants die or until such matters as a discovery motion or a denial of a motion for an adjournment are reviewed by the High Court.

sets of courts are headed by one District and Sessions Judge.<sup>3</sup> Bangladesh is divided into 64 Districts, and thus there are 64 District Courts.<sup>4</sup> The District and Sessions Judge has both original and appellate jurisdiction in civil and criminal matters.

On the civil side, below the District Judge there are Additional District Judges, Joint District Judges, Senior Assistant Judges and Assistant Judges. The Additional District Judge hears those cases assigned to him from the District Judge. It is at the Assistant Judge level that civil cases will generally enter the system. In addition, there are specialized courts and tribunals, ranging from income tax to labour courts. There are approximately 760 members of the subordinate judiciary.

On the criminal side, most cases are initially tried before magistrates, although by statute the Sessions Judge has original jurisdiction to try the most serious criminal matters. There are approximately 1300 magistrates in Bangladesh; of these approximately 350 perform judicial work in the criminal courts.<sup>5</sup> Magistrates are not required to be law graduates and may have received little or no formal legal training. They are under the supervision and control of the Ministry of Establishment (civil service), and the Supreme Court does not have any involvement in their selection or supervision.

The control of the judges' career path, including the power of appointment, posting, promotion, grant of leave, and discipline has been vested in the President. Notwithstanding that the Supreme Court maintains all records of a judge's career and activities for supervision and evaluation purposes, in practice it has been the Ministry of Law that controls the career of the judges.<sup>6</sup> Judicial postings in the subordinate judiciary are generally for a maximum of three years. Thereafter each judge usually is moved to another District.

For the High Court Division of the Supreme Court, judges are appointed by the President for an initial term, and if their performance is satisfactory they may be confirmed. Judges of the Appellate Division are elevated from the High Court Division. In all judicial appointments, there is a requirement of consultation with the Chief Justice of the Supreme Court. As a matter of practice and not requirement, approximately 2/3 of the High Court judges come from the Bar and 1/3 are elevated from the lower judiciary.

### Administration

The national administration of the judiciary is not carried out in a systematic or independent manner. Budgeting, planning (of which there is only a minimal amount),

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<sup>3</sup> In the delegation there are two District and Sessions Judges.

<sup>4</sup> There are 60 sessions districts, not 64.

<sup>5</sup> Those who do not do judicial work are members of the administration, e.g. the Deputy Commissioner and Additional Deputy Commissioner of each District.

<sup>6</sup> The issue of independence of the judiciary has been the subject of litigation that finally ended in April 2002 with a clear Appellate Division judgment requiring that the administration of the judiciary be separated from the executive. To date, the job remains to be accomplished. One of the thorny issues is how to treat the 1300 magistrates and to whom their control and supervision shall be assigned.

and technical assistance are handled by the Ministry of Law. Budgetary authority is minimal, with financial control effectively exercised by the Executive. Even the creation of a new administrative or staff post in the Supreme Court or lower judiciary is subject to the approval of Ministry of Establishment (civil service) and the Ministry of Finance, as well as the Ministry of Law. Tests for appointment to the judicial service have to date been administered by the Public Service Commission and subject to general civil service rules and regulations, although this is to change in the future when a Judicial Services Commission is established. Facilities of the courts are managed by the Public Works Department.

The highest non-judicial office within the judicial branch for the moment is that of the Registrar of the Supreme Court.<sup>7</sup> Although the Registrar retains some quasi-judicial functions, they are now minimal. His primary responsibilities center around the day-to-day administration of the Supreme Court. The Registry is organized into 25 different sections, some concerned with judicial matters and some concerned with administrative matters. Major reorganization is both desirable and anticipated during the current Legal and Judicial Capacity Building Project.

At the District level, the District Judge has major administrative responsibilities, which are minutely detailed in the procedural codes that govern case processing and court administration in Bangladesh. The District Court Judge is responsible for all personnel in the District Court, accounting, reporting to the Supreme Court and such planning and budgeting as may be done. The chief administrator who assists the District Court Judge is called the Administrative Officer (AO).

Each judge, except the Additional District Judge, in a District Court is in effect a separate court with its own particular territorial and pecuniary jurisdiction. He is assisted by an administrative staff person called a *Sherestedar*. Cases are filed in the court in which they are to be heard. Thus, cases are not filed in a central location. It is the different *Sherestedars* of the different “courts” within the District Court premises who first receive the initial pleadings in a civil case. Each judge in the District also has a Bench Clerk, a typist, and lower level office assistant. Some departments in the District Court serve all of the judges (courts), e.g. the process serving department (the *Nazarat*), the copying department and the records storage department.

### Caseloads

In the Appellate Division of the Supreme Court the pending list is approximately 3,000 cases.

In the High Court Division there were 95,600 cases pending at the end of 1998. This had risen to 131,500 pending cases at the end of 2001, of which approximately 80,000 were civil cases. In 1998 the High Court disposed of 14,650 cases. In 2001 the High Court disposed of 14,900 cases.

In the Subordinate Courts the backlog steadily increases.

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<sup>7</sup> The Additional Registrar of the Supreme Court with special responsibilities for the Appellate Division and also for the Legal and Judicial Capacity Building Project is a member of the Delegation.

## STATISTICS OF FILING, DISPOSAL AND PENDING CIVIL CASES IN THE SUBORDINATE COURTS FROM 1993-1998

Year	No. of Filings	No. of Disposals	No. of Pendencies
1993	135,623	128,513	306,075
1994	171,497	135,146	320,112
1995	157,750	139,698	331,418
1996	127,511	108,385	341,433
1997*	143,496	112,384	347,564
1998	138,521	110,294	347,325

The number of pending civil cases is now over 375,000. Criminal caseloads are also increasing.

Consistent anecdotal reports on the frequency of case types reflect that up to 80% of all civil cases have traditionally been connected to real property disputes. This has decreased now in Dhaka. Up to 85% of criminal cases until recently were said to come from real property disputes.

### Procedural Codes and Rules

Unlike many countries that are either newly emerging nations or are emerging from a chaotic period in their histories, Bangladesh has intact a longstanding judicial system that is grounded in principles of due process and fair administration of justice. There is justifiable pride in these traditions. Indeed there is a reluctance to make significant changes to the procedural rules without demonstrable evidence of the need to do so.

The Civil Procedure Code was enacted in 1908. This Code applies in the Supreme Court and District Courts, unless specifically provided to the contrary. The High Court Division and the Appellate Division of the Supreme Court also have their separate rules, additional to the Civil Procedure Code. At the District Court level, the rules and procedures for case processing and the rules for the operation of the administration of the District Courts are contained in the Civil Rules and Orders (the CROs), first published in abbreviated form in 1918, and later published in comprehensive form in 1935. Although revised from time to time to some limited extent, the CROs have endured in their basic original structure and form until today.

These codes and rules outline in rather minute detail procedures with which we are all generally familiar. There are provisions for filing and service of process, early identification of disputed issues of fact and law, framing of issues, summary disposition of issues of law, pre-trial discovery through requests for production of documents, requests for admission and for answers to interrogatories. Trials are to be set and once commenced are to continue until completion. Judgments must be issued within 7 days of final argument. Oldest cases ready for trial should be tried first. Adjournments are to be granted sparingly. Calculating a time line according to the rules applicable to general

civil cases in District Court, the time from filing to disposition should in theory be a minimum of approximately 185 days, and in the absence of unusual circumstances most cases could reasonably be done in 12 months.

Reality is otherwise. Adjournments are sought at every stage and virtually always granted. Cases that are easy to dispose of, or in which the clients have adequate money to pay what is necessary by way of formal and informal court and lawyer costs, are heard on a relatively timely basis. Other cases can take 5-10 years or more. Many are subject to the revolving door of interlocutory appeals and petitions to the appellate level (revision jurisdiction offering a major opportunity for delay) and then back down to the trial level and back up on another petition. Once old cases get old, they tend to stay in the system for years.

In general, the case management system is inefficient and lacks accountability. No sound tracking system functions for either case management or caseload management purposes. There is a remarkable system of registers for recording information and an abundance of statistical information is collected and forwarded regularly to the Supreme Court, the High Court Division of which has oversight jurisdiction over the District Courts. However, this is almost entirely a manual system. In the face of the number of cases handled by the system and the lack of available tools, the volume of paper work is overwhelming and it is difficult to assemble the information into usable form in a timely manner. Once the information reaches the Supreme Court it is difficult to use for planning or other purposes. The current Legal and Judicial Capacity Building Project will introduce appropriate automation and a court management information system.